

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

(1)	BILLY CLARK,	)	
(2)	MARGARET CLARK,	)	
		)	
	Plaintiff,	)	
		)	
v.		)	Case No. CIV-22-180-HE
		)	
(1)	SAMUEL DELAROSA,	)	
(2)	PRODUCERS SERVICE	)	
	CORPORATION,	)	
(3)	PRODUCERS SERVICE	)	
	CORPORATION-WEST,	)	
		)	
	Defendants.	)	

**DEFENDANTS’ SECOND NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendants Samuel DeLaRosa, Producers Service Corporation, and Producers Service Corporation-West (collectively, “Defendants”) file this Notice of Removal of this case from the District Court of Logan County, State of Oklahoma to the United States District Court for the Western District of Oklahoma. Defendants state as follows in support thereof:

1. On October 4, 2019, Plaintiff Billy Clark filed a Petition in the District Court of Logan County, Oklahoma captioned *Billy Clark v. Samuel Delarosa*, Case No. CJ-2019-221 (“State Court Action”). *Petition, Ex. 1.*

2. On October 30, 2019, Plaintiffs Billy Clark and Margaret Clark (“Plaintiffs”) filed an Amended Petition in the State Court Action which added Margaret Clark as a party. *Amended Petition, Ex. 2.*

3. On December 11, 2019, Plaintiffs filed a Second Amended Petition in the State Court Action asserting additional claims against Defendants. *Second Amended Petition, Ex. 3.*

4. On March 5, 2020, Defendants Producers Service Corporation and Producers Service Corporation-West (collectively, “PSC”) were served with the Summons and Second Amended Petition in the State Court Action via their registered agents. *PSC Summons, Ex. 4; PSC-W Summons, Ex. 5; PSC Service of Process Transmittal, Ex. 6; and PSC-W Service of Process Transmittal, Ex. 7.*

5. On March 19, 2020, Defendants filed a Notice of Removal effectuating removal of the State Court Action to the United States District Court for the Western District of Oklahoma per 28 U.S.C. § 1446(b) on the basis of diversity jurisdiction under 28 U.S.C. § 1332. *Notice of Removal, Ex. 8.* The Notice of Removal stated all diverse citizenship requirements were satisfied because Plaintiffs were citizens of Oklahoma, PSC was a citizen of Ohio, and Defendant Samuel Delarosa was a citizen of Texas. *Id.* This matter was then removed to the United States District Court for the Western District of Oklahoma as Case No. CIV-20-253-D and presided over by the Honorable Timothy D. DeGiusti, Chief United States District Judge. *Id.*

6. On October 27, 2021, the United States District Court for the Western District of Oklahoma entered an Order to Show Cause directing Defendants to show cause why remand was improper for lack of complete diversity of jurisdiction pursuant to 28 U.S.C. § 1332 because it was unclear from the excerpt of Defendant Samuel DeLaRosa’s deposition testimony quoted in Defendants’ Motion for Summary Judgment. *Order to*

*Show Cause, Ex. 9.* DeLaRosa mistakenly stated he relocated from Oklahoma to Texas in October 2019, not September 2019, in the deposition excerpt. *Samuel DeLaRosa Dep., 7:21-8:24 (May 11, 2021), Ex. 10.*

7. On November 17, 2021, Defendants filed a Response to the Order to Show Cause providing DeLaRosa's full deposition testimony wherein DeLaRosa clarified he relocated from Oklahoma to Texas in September 2019, not 2020, as he mistakenly testified. *Response to Order to Show Cause, Ex. 11.* Defendants also presented an affidavit from DeLaRosa wherein he further clarified having misspoken during his deposition, affirmed he relocated to Texas in September 2019 to accept employment, and relocated his personal belongings and household furnishings at the time of his relocation with no intent to return to Oklahoma. *Samuel DeLaRosa Affidavit, Ex. 12.*

8. On November 18, 2021, Plaintiffs filed a Motion for Leave of Court to File a Reply to Defendant's Response to the Show Cause Order. *Motion for Leave of Court to File Reply to Defendant's Response to Show Cause Order, Ex. 13.*

9. On November 23, 2021, the Court entered an Order granting Plaintiff's Motion. *Order Granting Plaintiffs' Motion for Leave of Court to File Reply to Defendant's Response to Show Cause Order, Ex. 14.*

10. On November 23, 2021, Plaintiffs filed a Reply to Defendant's Response to the Show Cause Order claiming DeLaRosa resided in Oklahoma in October 2019. *Plaintiff's Reply to Defendant's Response to the Show Cause Order, Ex. 15.* The evidence Plaintiffs included in their Reply was inconclusive as to DeLaRosa's citizenship at the time the Petition was filed because, at most, it demonstrated his relocated to Texas

approximately eight months before the date of his deposition, or September 2019, when DeLaRosa testified he relocated to Texas. *Id.* Plaintiffs included a statement from a process server, Brenna Doherty (the “Doherty Affidavit”) regarding an unnamed neighbor who confirmed DeLaRosa was her neighbor and two individuals who stated DeLaRosa resided at his San Angelo, Texas address. *Id.*

11. On November 30, 2021, Defendants filed a Reply in Support of their Response to the Order to Show Cause which provided additional evidence supporting DeLaRosa’s Texas citizenship at the time the Petition was filed. *Defendants’ Reply in Support of Response to Order to Show Cause, Ex. 16.* Defendants’ Reply specifically challenged the Doherty Affidavit on the basis the individuals Doherty interviewed at DeLaRosa’s San Angelo, Texas address confirmed they knew him and stated DeLaRosa was their neighbor. *Id.* The Reply further challenged the evidence Plaintiffs relied upon as inconclusive to establish DeLaRosa was not a Texas citizen at all relevant times by disputing the Locate Report’s credibility based on its factual inaccuracies and expanding on references to DeLaRosa’s deposition testimony clarifying his misstatement during the excerpt referenced in the October 27, 2021 Order to Show Cause. *Id.*

12. On February 1, 2022, the United States District Court for the Western District of Oklahoma entered a Memorandum of Decision and Order of Remand remanding the Federal Court Action to the District Court of Logan County, State of Oklahoma on the basis complete diversity was lacking because DeLaRosa resided in Oklahoma in October 2019 at the time the Petition was filed in the State Court Action. *Memorandum of Decision and Order of Remand, Ex. 17.*

13. Defendants maintain complete diversity exists among the Parties. Plaintiffs are citizens of Logan County, State of Oklahoma. *Amended Petition, Ex. 2, ¶ 2; Second Amended Petition, Ex. 3, ¶ 3*. Defendant Delarosa is and was a citizen of San Angelo, Tom Green County, State of Texas at all relevant times. *Rose DeLaRosa Affidavit, Ex. 18; Farmers Insurance Monthly Billing Statement, Ex. 19; Shannon Medical Center Data Search Statement, Ex. 20; Producers Service Corporation envelope, Ex. 21; TxTag Letter, Ex. 22*. Defendants PSC and PSC-W are Ohio corporations with their principal places of business in Zanesville, Ohio. *Amended Petition, Ex. 2, ¶ 4; Second Amended Petition, Ex. 3, ¶ 5*.

14. In addition to complete diversity, the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, establishing this case is properly removed per 28 U.S.C. §§ 1332, 1441, and 1446. Plaintiffs specifically assert in the Petition, Amended Petition, and Second Amended Petition they seek “judgment against Defendants for actual damages in an amount not yet determined, but believed to be in excess of the amount required for diversity jurisdiction . . . .” *Petition, Ex. 1, p. 3; Amended Petition, Ex. 2, p. 6; Second Amended Petition, Ex. 3, p. 6*.

15. The United States District Court for the Western District of Oklahoma is the appropriate court for filing this Second Notice of Removal from the court where the State Court Action is pending. Accordingly, Defendants seek a second removal of the State Court Action to this Court pursuant to 28 U.S.C. § 1446. *Fritzen v. Boatmen’s Bank*, 212 U.S. 364 (1909).

16. Defendants' Second Notice of Removal relies upon additional information not available at the time of the First Notice of Removal was filed or when the Court entered the Memorandum of Decision and Order of Remand. The additional information, attached in part hereto as Exhibits 18-22, includes evidence and witness testimony which further demonstrates DeLaRosa's Texas citizenship at the time the Petition was filed. The additional information confirms DeLaRosa received mail and paid utilities at his San Angelo, Texas based residence, owned a personal vehicle registered in Texas, maintained an automotive insurance policy issued in Texas by his San Angelo, Texas insurance agent, participated in religious and civil activities in San Angelo, Texas, and received medical treatment from his family physician in San Angelo, Texas.

17. Defendants will file a copy of the Notice of Removal with the State Court and provide written notice to all counsel of record upon receiving the federally-filed Notice of Removal in accordance with 28 U.S.C. § 1446(d).

18. Per 28 U.S.C. § 1446 and LCvR 81.2, copies of the court docket sheet and all responses, replies, or other papers filed and/or served in the State Court Action, Logan County District Court Case No. CJ-2019-221, are attached hereto. *Docket Sheet, Ex. 23; DeLaRosa Summons, Ex. 24; Notice of Filing of Removal, Ex. 25; Plaintiff's Motion for Status Conference and to Set the Matter on the Court's Trial Docket, Ex. 26; Notice of Hearing, Ex. 27; State Court Action Memorandum of Decision and Order of Remand State Court Action, Ex. 28.*

19. This cause of action is removable to the United States District Court for the Western District of Oklahoma per 28 U.S.C. §§ 1441(a) and (b) and all other applicable statutes.

Respectfully submitted,

s/Derrick T. DeWitt

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**CERTIFICATE OF MAILING**

I hereby certify March 2, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Western District of Oklahoma by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

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s/Derrick T. DeWitt

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